BEFORE THE ADJUDICATORY BOARD FOR MAJOR PORTS, MUMBAI

Application No. 01 of 2024

APPLICANT:

M/s. Shree Krishna Stevedores Pvt. Ltd.
C-1/266,
The Mazgaon Co-operative Housing Society Ltd.,
Barrister Nath Pai Marg,
Mazgaon, Mumbai – 400010.

V/s

RESPONDENT:

Board of Mumbai Port Authority
Port Bhavan, 2nd Floor
S.V. Marg, Ballard Estate,
Mumbai - 400 001.

APPEARANCE:

For the Applicant: Senior Advocate Umesh Shetty along with Advocate Richa Iyer

For the Respondent: Advocate Hamza Lakhani along with Advocate Akshata Parab

CORAM:

Hon'ble Justice Shri A. J. Desai – **Presiding Officer.**
Hon'ble Shri C. Viswanath – **Member.**
Hon'ble Dr. Sanjeev Ranjan – **Member.**

J U D G M E N T

Dated: 09 October 2026

1. The matter relates to an application filed by M/s.Shree Krishna Stevedores Private Limited (SKSPL) (hereinafter referred to as the Applicant), before the Adjudicatory Board for Major Ports (ABMP) under Section 32 of the Major Port Authorities (MPA) Act, 2021, challenging the demand notices for the sale deficit issued by the Mumbai Port Authority (MBPA) (hereinafter referred to as the Respondent). The Applicant has prayed to quash the notices issued by the Respondent, prevent being treated as a defaulter and restrain the Respondent from taking coercive actions against the Applicant.

2. The material facts in the matter are that during the period from 16 February 2018 to 25 April 2018, the Applicant had brought 10 coastal consignments of

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ordinary river sand in bulk through Vessels from the Port of Gujarat to the Port of Mumbai. In this connection, the Applicant applied for an open storage space at Haji Bunder, Mumbai, for storage of sand cargo. The permissions were granted by the Respondent by drawing reference to the Respondent's Circular dated 17 March 2012.

3. The Circular dated 17 March 2012 issued by the Respondent mentions that by Office circulars dated 03.11.2005, 10.01.2008, 31.01.2008, 21.02.2008 and 22.09.2011, certain storage areas were nominated inside the docks and at outlying areas for storage of import cargo under the provisions of Section 3.3(A)(II) of Chapter 3 of Scale of Rates. The Circular dated 17 March 2012 issued by the Respondent also notified/specified approx. 10000 sq. mtrs of yard at Haji Bunder for storage of Import Cargo. The said Circular drew reference to the same Section 3.3(A)(II) of Chapter 3 of Scale of Rates (SOR) of Respondent for prescription for levy of licence fees as applicable to storage areas nominated by office circulars dated 03.11.2005, 10.01.2008, 31.01.2008, 21.02.2008

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and 22.09.2011. As per the said provision in the SOR of the Respondent prevailing in 2018, the licence fee prescribed for storage of cargo in open sheds was ₹51/- per sq. meter per month for the first 30 days and thereafter the licence fee was prescribed at ₹102/- per sq. meter per month from 31st to 60th day. The SOR also prescribed that the cargo lying uncleared beyond 60 days shall be subject to demurrage from the 61st day onwards as per Section 3.1(B) of Chapter 3 of Scale of Rates of Respondent.

4. The Respondent granted storage permission to the Applicant for an initial period of 30 days by charging license fee of ₹51/- per sq. meter per month. Thereafter, at the request made by the Applicant, the Respondent extended the storage period for another 30 days by charging license fee of ₹102/- per sq. meter per month. From the submissions of the parties, it is seen that while granting extension, the Respondent has indicated that in the event the Applicant fails to clear the cargo and vacate the premises, demurrage charges shall be levied on the cargo from the 61st day onwards as per Section 3.1(B) of Chapter 3 of Scale of Rates of Respondent. The Applicant

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paid the licence fees and sought extension of time for storage of cargo, without any immediate objection.

5. The Applicant has submitted that due to poor market conditions, the cargo remained un-cleared from the storage area of the Respondent. On 20 July 2018, the Applicant wrote to the Respondent stating it has made errors of not applying for timely extension of storage permission to the Respondent and that it was under the impression that the storage of sand cargo would be governed by the Respondent's Circulars dated 12 May 2017 and 16 March 2018.

6. The May 2017 Circular was issued by the Respondent for a period of one year from 28 April 2017, *inter alia* prescribing licence fee for storage of import gypsum/ MOP and other such dry bulk cargo in the notified areas of MBPA upto a maximum period of 150 days. As per the Circular, the licence fee prescribed for storage of cargo in open yards was ₹51/- per sq. meter per month for the first 30 days and thereafter the licence fee was prescribed at ₹102/- per sq. meter per month from 31st to 150th day. The Circular also prescribed that in the

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event of non-clearance of consignments within a period of 150 days, demurrage shall be recovered from 151st day onwards at the rates specified in Section 3.1(B) of Chapter 3 of SOR of Respondent.

7. The March 2018 Circular was issued by the Respondent for a period of one year from 16 March 2018, *inter alia* prescribing licence fee for storage of import gypsum/ MOP and other such dry bulk cargo in the notified areas of MBPA upto a maximum period of 180 days for a period of one year from 16 March 2018. As per the Circular, the licence fee prescribed for storage of cargo in open yards was ₹51/- per sq. meter per month for the 1st 30 days and thereafter the licence fee was prescribed at ₹102/- per sq. meter per month from 31st to 180th day. The Circular also prescribed that from 181st day onwards, the demurrage charges as specified in Section 3.1(B) of Chapter 3 of SOR of Respondent will be levied.

8. Thus, unlike the 2012 Circular, which prescribed levy of demurrage charges as per Section 3.1(B) of Chapter 3 of Scale of Rates of Respondent from the 61st day onwards, the 2017 and 2018 circulars allowed extended

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storage period up to 150 and 180 days respectively on a license fee basis (on per sq. m per month basis) and shifted the onset of demurrage as per Section 3.1(B) of Chapter 3 of Scale of Rates from the 151st and 181st day (on per tonne per day basis) respectively.

9. In this backdrop, on 20 July 2018, the Applicant wrote to the Respondent stating that it was under the impression that the storage of sand cargo would be governed by the Respondent's Circulars dated 12 May 2017 and 16 March 2018 and thus, requested the Respondent to permit the Applicant to clear the consignment by waiving the demurrage charges upto 180 days, as per the 2018 Circular.

10. On 24 October 2018, the Respondent rejected the waiver request made by the Applicant and directed clearance of the cargo upon payment of upto date port charges.

11. After exchange of few correspondences between the Applicant and Respondent and due to continued non-clearance of sand cargo, the Respondent initiated statutory sale procedure under Sections 61 and 62 of the

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Major Port Trusts Act, 1963. In this regard, Pre-sale notices were issued by Respondent in March and April 2019, advertisements were published by the Respondent in five newspapers on 11 April 2019 and a State Gazette notification was issued by the Respondent on 18 April 2019. Thereafter, the cargo was eventually sold by the Respondent via e-auction on 20 January 2020 for an aggregate sum of ₹27,14,376/-.

12. To recover the remaining unpaid demurrage charges as accumulated during the pre-sale storage period, the Applicant in the rejoinder has claimed that Respondent has initially issued the first demand notice dated 18 September 2023 for ₹41,99,072/-, second demand notice dated 25 October 2023 for an amount of ₹90,38,295/- and thereafter issued the final demand notice dated 27 November 2025 to the Applicant claiming ₹14,62,13,098/- .

13. The Applicant has submitted that the 2012 Circular based on which it was allotted land for storage of cargo in Haji Bunder is for import cargo, whereas the sand cargo stored by the Applicant was coastal cargo. Moreover, it is

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the submission of the Applicant that the subsequent circulars of 2017 and 2018 had widened the scope of levy of licence fees on 'other dry bulk cargo'.

14. The Applicant has also submitted that though its cargo landed in 2018 and the e-auction was held in January 2020, the port is required to sell un-cleared cargo within 4 months of landing as per Section 61 and 62 of the Major Port Trusts Act, 1963. Thus, the Applicant is of the view that Respondent cannot claim any deficit caused by its own delay.

15. It is the Applicant's submission that it is not open for the Respondent to contend that the Applicant did not raise any objections when the storage permission and further extension were granted by the Respondent applying the rates based on the 2012 circular, given that the 2012 Circular could have never been made applicable in view of the subsequent circulars of 2017 and 2018, which were in force when the Applicant's bulk cargo had landed. Accordingly, the Applicant has submitted that he cannot be estopped from contending the applicability of

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the said 2017/ 2018 circulars. Based on its submissions, the Applicant prays for the following reliefs:

"*(a) Quashing of MbPA's demand notices wrongfully demanding the demurrage charges from Shree Krishna due to the reasons contained in this Application.*

(b) Restraining MbPA whether by themselves, their officials, agents, assigns, subordinates and/or superiors in office or otherwise howsoever from communicating about or treating in any manner whatsoever Shree Krishna as a defaulter;

(c) Directing MbPA to not take any coercive or restraining action against Shree Krishna from carrying on its business and availing of services offered by MbPA in any manner;

(d) For ad interim and interim reliefs in terms of prayers (b) and (c) above;

(e) Requesting for an oral hearing of this Application;

(f) For costs of this Application;

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(g) For such further reliefs as in the nature and circumstances of the case, as may deem fit and proper."

16. With reference to the Applicant's submissions, the Respondent has submitted that the 2012 circular was location specific and was in connection to storage of cargo at Haji Bunder, where the Applicant's cargo was actually stored, whereas, the subsequent circulars of 2017 and 2018 were commodity specific and issued for a limited period of one year and did not supersede the 2012 Circular.

17. The Respondent has also submitted that the Applicant had explicitly applied and was allotted open storage area at Haji Bunder by the Respondent clearly indicating the levy of charges based on the 2012 circular. Thus, considering that the Applicant has paid initial license fees based on the 2012 Circular, the Respondent has stated that the plea of 'mistaken impression' as raised by the Applicant is a belated afterthought to evade payment of statutory dues to the Respondent.

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18. Further, the Respondent has submitted that the Scale of Rates as referred in the 2012, 2017 and 2018 Circulars prescribes levy of charges for the goods stored irrespective of whether the goods are import cargo or coastal cargo.

19. With regard to the submission of the Applicant relating to e-auction, the Respondent has submitted that the sale of uncleared cargo of the Applicant was held lawfully under Section 61 and 62 of the Major Port Trusts Act, 1963, after giving notices to the Applicant and after extensively publishing the advertisement of sale in various newspapers and also in the State Gazette. Further, the Respondent has also submitted that to protect the user, the port has voluntarily restricted its demurrage calculation period to 4 months instead of calculating it indefinitely until the date of sale.

20. On completion of pleadings, the application was heard at length. The parties have submitted their written submissions. Based on the pleadings, written submissions and the arguments made by the Advocates

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on behalf of the Applicant and the Respondent, this Board frames the following issues for determination:

(i). Whether the 2017 and 2018 Circulars applied to the Applicant's ordinary river sand stored at Haji Bunder?

(ii). Whether the Applicant is bound by the 2012 Circular merely because the initial storage permissions were issued and payments were made on that basis?

(iii). Whether the Respondent failed in its statutory duty to execute a timely sale of the un-cleared goods?

(iv). Whether the Respondent is entitled to recover the alleged sale deficit, including demurrage attributable to the period during which the cargo remained unsold owing to the Respondent's delay and the sale-deficit demand notices can be sustained?

21. With regard to issue no. (i) **Whether the 2017 and 2018 Circulars applied to the Applicant's ordinary river sand stored at Haji Bunder**, it is the contention of

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the Applicant that the 2017 and 2018 Circulars covered "all notified areas" and included "other such bulk cargo", which encompasses coastal sand bulk cargo and hence the storage of the Applicant's sand cargo in Haji Bunder area should inherit the 150/ 180 days demurrage free storage tier as prescribed in the 2017 and 2018 Circular respectively. The Applicant also points out that natural sand and gypsum share identical commercial characteristics as bulk minerals under the Customs Tariff Act, 1975 as well as per Ministry guidelines. The Applicant cites *Leela Gaur vs. President General Council, Institute of Physically Handicapped & Ors [2017 SCC OnLine Del 7412], Union of India v. Diljeet Singh [(1999) 2 SCC 672]* and *Secretary to the Government of Haryana & Ors. v. Vidya Sagar [(2009) 14 SCC 652]* to assert that subsequent circulars automatically override older ones.

22. The Respondent, however, contends that the 2012 Circular specifically identified a 10,000 sq. meter area at Haji Bunder for import storage and was never formally repealed and argues that the subsequent 2017 and 2018 Circulars were intended solely to regulate specialized

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import commodities like Gypsum and Muriate of Potash (MOP) and did not explicitly mention Haji Bunder, thereby keeping the 2012 Circular exclusively active for that site. Further, the Respondent asserts that the phrase "other dry bulk cargo" as indicated in the 2017 and 2018 Circulars must be read restrictively to mean only "imported other dry bulk cargo" as it immediately follows the words "import Gypsum, MOP". Therefore, the Respondent argues that the domestic coastal river sand brought by the Applicant falls entirely outside the purview of the 2017 and 2018 Circulars and remains bound by the 60 day limit and levy of demurrage charges as per the 2012 Circular.

23. The cargo in the present dispute consists of ordinary river sand brought via coastal vessels from the Port of Gujarat to the Port of Mumbai. The Respondent's primary defence relies on cutting down the broad meaning of "other dry bulk cargo" by tying it exclusively to the 'import' status of Gypsum and MOP. This interpretation is legally unsustainable. The phrase "other such dry bulk cargo" cannot be read in a vacuum; it must be interpreted using

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the established legal principle of *ejusdem generis* (of the same kind). For the rule of *ejusdem generis* to apply, the specific words enumerated must form a distinct, singular "genus" or category that logically restricts the general words that follow. Here, Gypsum and MOP do not share a genus based on their international origin; they share a genus based on their physical and logistical nature i.e. they are in loose and unbagged form and are free-flowing industrial minerals handled in high volumes. River sand, by its natural character and physical handling, fits squarely within the definition of dry bulk cargo. The Applicant has demonstrated through the Customs Tariff Act, 1975 and the Ministry of Ports' own Standardised Templates for Scale of Rates that sand and gypsum share similar categorizations as mineral dry bulk products. The primary operational bottleneck for any Port is land management and cargo evacuation speeds, which depends entirely on the physical characteristics of the cargo and is not dependent on the aspect as to whether the cargo has crossed a state border or an international

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one. Therefore, the expression "other such dry bulk cargo" in the 2017 and 2018 Circulars covers river sand.

24. Under Section 111 of the erstwhile Major Port Trusts (MPT) Act, 1963, the Central Government has issued policy directions to prescribe concessional rates for coastal cargo and accordingly erstwhile Tariff Authority for Major Ports (TAMP) has issued policy directives promoting coastal shipping. It would be discriminatory and violative of Article 14 to extend a beneficial 150/180-day demurrage-free storage regime to imported foreign bulk minerals while subjecting domestic coastal river sand to a 60-day limit.

25. The Respondent's defence is that the 2012 Circular uniquely governs the 10,000 sq. meter plot at Haji Bunder and that the 2017 and 2018 Circulars were issued for storage of dry bulk commodities across all notified open storage areas of the Mumbai Port. They did not carve out or exclude Haji Bunder from their beneficial ambit. The 2012 Circular and the 2017/2018 Circulars operate in different fields. The former identifies the storage area; the latter prescribe the applicable storage regime for the

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specified class of cargo. The question is, therefore, not whether the later circular impliedly repealed the earlier circular, but whether the Applicant's cargo falls within the class of cargo covered by the later circulars and whether Haji Bunder was among the notified areas to which those circulars applied.

26. The fact that the 2012 Circular had earlier notified Haji Bunder as an area for storage does not, by itself, mean that every subsequent statutory rate or exemption applicable to the relevant class of cargo stood excluded from that area. The distinction drawn by the Respondent between a "location-specific" 2012 Circular and "commodity-specific" 2017/2018 Circulars does not resolve the issue. The two operate on different aspects of the regulatory framework. The 2012 Circular identified the storage area; the subsequent circulars prescribed the applicable storage regime for the specified class of bulk cargo. The expression "other such dry bulk cargo", appearing after gypsum/MOP, cannot be rendered otiose. The Applicant's cargo was admittedly ordinary river sand in bulk and was stored in an open yard.

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27. The Respondent has not produced a convincing statutory or textual basis for excluding such cargo from the residual category of "other such bulk cargo". The Respondent has not placed before us any express provision in the 2017 or 2018 Circular excluding: (a) coastal cargo or (b) river sand; or (c) Haji Bunder from the expression "other such dry bulk cargo" or from the notified areas covered by the Circulars. The fact that the 2012 Circular specifically identified Haji Bunder as a storage location does not establish that the location was thereafter insulated from subsequent tariff provisions applicable to a class of cargo stored in notified areas. We, therefore, do not accept the Respondent's contention that the 2012 Circular continued to govern the cargo merely because Haji Bunder was originally notified under that Circular.

28. The Board, therefore, holds that the 2017 and 2018 Circulars read with the applicable notified scale of rates govern the storage charges and demurrage regime applicable to the Applicant's cargo during the respective period of operation.

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29. With regard to issue no. (ii) **Whether the Applicant is bound by the 2012 Circular merely because the initial storage permissions were issued and payments were made on that basis**, the Applicant by relying on *Tata Chemicals Ltd. v. Commissioner of Customs [(2015) 11 SCC 628]* argues that merely because the Applicant inadvertently missed highlighting the wrong application of the 2012 Circular when the storage permissions were given between February - April 2018 and realised the wrong application of the 2012 Circular only in July 2018, the Respondent as an instrument of "State" there can be no estoppel against the law and that statutory rights cannot be bypassed or waived. The Applicant also draws reference to *Kukreja Construction Company v. State of Maharashtra [(2024) 14 SCC 594]* to establish that an inadvertent payment or omission does not constitute an intentional waiver of rights without full knowledge of the statutory options available.

30. The Respondent has strongly urged that the Applicant is legally barred from challenging the applicability of the Circular of 2012 given that the

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relationship with the Applicant was purely contractual. The crux of the Respondent's argument rests on a sequential timeline that the Applicant voluntarily approached the Port Authority, accepted the formal storage permission letters which explicitly cited the 2012 Circular, took physical possession of the plots and paid the charges without registering any immediate protest. Consequently, the Respondent asserts that the Applicant is barred by the doctrine of estoppel from changing its stance as a "belated afterthought" simply to escape its accrued liability.

31. A Major Port is a statutory body established under the Major Port Trusts Act, 1963 (now the Major Port Authorities Act, 2021) and thereby, exercises sovereign and statutory powers when it levies tariff. The Supreme Court has repeatedly held that a statutory body cannot escape its public law duties by hiding behind the veil of a commercial contract. Placing reliance on the judgment of the Apex Court in *Madras Aluminum Company Ltd. v. Tamil Nadu Electricity Board [(2023) 8 SCC 240]*, statutory authorities and instrumentalities of the State cannot

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bypass its public law duties or act arbitrarily even within the scope of a contract. Their actions must always align with public interest, fairness, and the statutory framework under which they operate. The storage permissions issued have to be under the Scale of Rates and circulars authorized by the Board of Trustees.

32. The benefit of doctrine of estoppel as claimed by the Respondent fails as administrative circulars and notifications issued by an instrumentality of the State such as a Major Port carries a statutory flavour. The 2017 and 2018 Circulars are instructions that extended storage periods for bulk cargo across all notified areas. The Applicant's failure to spot this systemic regulatory error between February and April 2018 does not grant the Respondent a permanent legal right to collect an inapplicable tariff or levy premature demurrages. In *Tata Chemicals Ltd v. Commissioner of Customs [(2015) 11 SCC 628]* the Supreme Court addressed a matching paradigm where a corporate citizen had initially accepted an erroneous regulatory process applied by customs officials without early protest -

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"18. [...] In law equally the Tribunal ought to have realized that there can be no estoppel against law. If the law requires that something be done in a particular manner, it must be done in that manner, and if not done in that manner has no existence in the eye of law at all. The Customs Authorities are not absolved from following the law depending upon the acts of the domestic importer. [...]".

33. Furthermore, the Respondent's attempt to imply a "waiver of rights" by the Applicant must be tested against the high standards required to prove a waiver in law. As recently reiterated in *Kukreja Construction Company v. State of Maharashtra (2024)*, a legal waiver must be a conscious, deliberate, and intentional abandonment of a known legal right, executed with full knowledge of all material facts. In the present case, the Applicant did not execute a conscious waiver. The question before the Board is whether the Respondent was legally entitled to levy charges contrary to the regulatory regime applicable to the cargo at the relevant time. A port authority exercising statutory powers cannot, create a liability contrary to the governing statutory Scale of Rates or a valid

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exemption/remission applicable to the cargo. The Applicant's acceptance and payment of the initial charges do not, by themselves, preclude the Applicant from challenging the legality of the levy if the charge is demonstrated to be contrary to the applicable statutory tariff. Whether there was any conscious waiver must be determined from the evidence.

34. At the relevant time, Sections 48 and 49 of the Major Port Trusts Act, 1963 provided the statutory framework for scale of rates and conditions relating respectively to services, including storage and demurrage, and use of property belonging to or in the possession of the Port Board. Different scales and conditions could be framed for different classes of goods and vessels. The storage permissions in the present case were not merely private contractual arrangements between two commercial parties. They were permissions granted by a statutory Port Authority in exercise of powers under the statutory tariff framework. The terms of an individual storage permission, therefore, cannot be considered independently of the Scale

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of Rates and the valid tariff circulars applicable to the relevant cargo and period.

35. The Applicant did accept the storage permissions issued by the Respondent and paid the charges demanded under the 2012 Circular. However, acceptance of an amount demanded by a statutory authority cannot by itself validate the levy of a charge contrary to the tariff regime lawfully applicable to the cargo. The Supreme Court in *Tata Chemicals Ltd. v. Commissioner of Customs, (2015) 11 SCC 628*, held that there can be no estoppel against law and that an act which is contrary to law does not become lawful merely because the affected person did not object at the earliest opportunity.

36. In the present case, the 2017/2018 circulars covered the relevant cargo and period. The Applicant's letter of 20 July 2018 raised the issue during the period when the cargo was still lying in the Port and before the statutory sale process was initiated.

37. We, therefore, reject the Respondent's plea that the Applicant is barred by estoppel or waiver from relying upon the 2017/2018 Circulars. Based on the above, this

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Board finds that the storage permissions and the calculation of related fees are strictly an exercise of statutory power governed by public law. Therefore, the Applicant is fully entitled to argue that the Respondent applied the wrong statutory framework, and its initial compliance does not block its right to legal relief.

38. The next issue no. (iii) **Whether the Respondent failed in its statutory duty to execute a timely sale of the uncleared goods**, the Respondent argues that because the Applicant failed to clear the river sand cargo, the accumulation of demurrage is entirely the Applicant's fault. The Applicant, however, contends that the Respondent failed in its statutory duty to conduct a timely sale under the Major Port Trusts Act, 1963, and that the port cannot profit from its own administrative delays.

39. To resolve this issue, the Board relies on the landmark rulings of the Hon'ble Supreme Court in *Chairman, Board of Trustees, Cochin Port Trust v. M/S Arebee Star Maritime Agencies Pvt. Ltd. & Ors. [(2021) 11 SCC 641]*. In the said judgment, the Supreme Court has extensively mapped out the statutory balance between a

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port's right to levy demurrage. The Court explicitly ruled that a Port Authority cannot allow demurrage charges to accumulate indefinitely when an importer or stevedore fails to clear the goods. The Court has also observed that the port authority cannot act in a lackadaisical manner, allowing demurrage to accumulate and then seek to recover these exorbitant sums from the importer or steamer agent.

40. Further, the Supreme Court has also noted that under Sections 61 and 62 of the Major Port Trusts Act, 1963, the Port is armed with the statutory powers and is under constitutional duty to sell goods within reasonable time. The purpose of this power is to keep the port clear for active maritime trade and prevent unnecessary financial burden. Based on the above, the Apex Court held that ordinarily the time of four months from the date of landing of goods mentioned in Section 63(1)(c) of MPT Act, 1963, should be the outer limit within which such goods should be put for sale. If not put for sale within such time, the Board must explain as to why in its opinion this could

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not be done, which explanation can then be tested by the courts.

41. In the present matter before the Board, the timeline of the present dispute highlights a clear failure by the Respondent to act in a timely manner. The 10 consignments of ordinary river sand bulk cargo landed at Haji Bunder in 2018 and a rate dispute emerged. Towards the end of October 2018, the Respondent formally rejected the Applicant's representations. Thereafter, in mid of March 2019, the Respondent issued its initial sale notice under Section 61 and finally executed the public e-auction in mid of January 2020. The public e-auction was carried out nearly 15 months after the representation was rejected and about 10 months after the initial sale notice. The Respondent has offered no valid legal justification for this delay. The presence of any court injunctions, stay orders from an appellate body or any customs interventions blocking the sale has not been brought to the notice of the Board. By keeping the sand idle for over a year and a half, the Respondent allowed the primary claim to inflate into a

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substantial amount of ₹14,62,13,098/- while the cargo itself brought in a mere ₹27,14,376/- at auction.

42. Moreover, the Applicant has also raised questions regarding the validity of the auction itself. Furthermore, the calculated deficit jumped from an initial demand notice of ₹41 Lakhs in September 2023 to over ₹14.62 Crores in November 2025. Under the ruling in Cochin Port Trust as referred above, when a port acts in its statutory duties, its auction process must be timely and if the port chooses to delay the liquidation of the goods, the Board must explain as to why in its opinion this could not be done, which explanation can then be tested by the courts and only if the explanation is found to be reasonable it can shift the burden of delay onto the owner or the person entitled to the goods.

43. In the absence of any judicial stay, injunction, or legal impediment preventing the Respondent from exercising its power of sale, keeping the goods stranded until 2020 reflects unjustified delay. The deficit claim, which is a result of unjustified delay, cannot be legally recovered from the Applicant. Once the Respondent had

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itself taken the position that the permitted storage period had expired and that demurrage had become payable, it was incumbent upon it to take a considered decision whether the cargo should be allowed to remain in storage or whether the statutory machinery for recovery and sale should be invoked. In the present case, instead of taking such timely action, the Respondent permitted the cargo to remain in its custody. The Applicant thereafter expressly approached the Respondent on 20 July 2018 seeking permission to clear the cargo and requesting that the charges be considered under the 2017/2018 circulars. The Respondent rejected that request on 24 October 2018 and directed the Applicant to clear the cargo on payment of up-to-date charges. Even thereafter, the statutory sale process was not initiated until March/April 2019. The cargo was ultimately sold only on 20 January 2020.

44. The Board therefore finds that Sections 61 and 62 confer a discretionary statutory power of sale, but that such discretion is required to be exercised reasonably and consistently with Article.

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45. In accordance with *Arebee Star*, four months from landing ordinarily constitutes the outer limit within which the goods should be put up for sale. Where that period is exceeded, the Respondent is required to furnish a satisfactory explanation for the delay. On the material placed before us, the Respondent has not furnished a satisfactory explanation for the period between the expiry of the relevant period and initiation/progress of the sale process.

46. The next issue no. (iv) **Whether the Respondent is entitled to recover the alleged sale deficit, including demurrage attributable to the period during which the cargo remained unsold owing to the Respondent's delay, and the sale-deficit demand notices can be sustained.** The Respondent argues that because the Applicant left the uncleared river sand cargo, it remains personally liable under the Major Port Trusts Act, 1963 to the deficit between the accrued demurrage and the auction proceeds and accordingly seeks to recover deficit based on an auction that yielded of ₹27.14 Lakhs. The Applicant, however, submits that the Port has failed to

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execute a timely sale, extended storage permissions and conducted a procedurally flawed auction and points out that if the calculations are modified utilizing the extended license fees under the 2017/ 2018 circulars alongside the initial payments already deposited, no deficit exists.

47. Once the Respondent knew that: (a) the cargo remained uncleared; (b) its own permitted storage period had expired; (c) the Applicant disputed the applicable tariff; (d) the Respondent had rejected the Applicant's request for application of the 2018 Circular; and (e) charges were continuing to accumulate, the Respondent was required to act with reasonable expedition. This follows not from contractual duty to mitigate damages alone but from the constitutional requirement of non-arbitrariness governing a statutory authority.

48. The Port extended the initial storage permissions but failed to execute a timely sale under Sections 61 and 62 of the Act. The Respondent though granted the first extension and final extension of the license storage period, but failed to conduct a timely auction for nearly 1.5 years.

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The Port allowed low-value ordinary river sand to take up space while piling on massive demurrage charges.

49. The fact that demurrage is ordinarily a statutory charge does not mean that every consequence of indefinite retention of goods can automatically be transferred to the port user. Section 63 of the MPT Act prescribed the manner in which sale proceeds were to be applied. *Arebee Star* establishes that the statutory power to sell goods cannot be exercised arbitrarily and that the Port must act reasonably in disposing of goods in its custody. The present case therefore cannot be treated as one in which, the entire demurrage accumulated as a consequence of the prolonged retention of the cargo can be placed upon the Applicant. A balanced application of the statutory scheme requires that the Applicant should bear only such financial consequence as can properly be attributed to the cargo during the period for which the Applicant was responsible, while the financial consequence attributable to the Respondent's unreasonable delay in sale cannot be recovered from the Applicant as a sale deficit.

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50. The Applicant has presented a comprehensive accounting breakdown demonstrating that if the extended license fees under the beneficial 2017 and 2018 Circulars are correctly applied alongside the initial payments already deposited by the Applicant, no genuine deficit exists.

51. We, therefore, hold that demurrage which is attributable to the Respondent's unreasonable delay in taking and progressing statutory steps for disposal of the cargo cannot be recovered from the Applicant and the portion attributable to the Respondent's unreasonable delay should be excluded. The Applicant remains liable for charges which are otherwise lawfully leviable under the applicable tariff and which are properly attributable to the period for which the Applicant was responsible, subject to the statutory provisions governing recovery and sale proceeds. Respondent cannot enlarge that liability by allowing the cargo to remain in its custody for an unreasonable period without satisfactory explanation and then treating the resulting financial burden as an amount

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recoverable from the Applicant and therefore, the sale-deficit demand notices cannot be sustained.

52. The Board accordingly holds that the Respondent, while exercising statutory powers, was required to apply the statutory regulatory regime prevailing when the Applicant's cargo was stored. The subsequent 2017 and 2018 Circulars could not be disregarded merely because the original storage permissions had referred to the 2012 Circular. Acceptance/payment of charges under the 2012 based permissions does not prevent the Applicant from challenging a charge contrary to the applicable statutory tariff.

53. The Board further finds that the Respondent did not dispose of the cargo with the expedition required of a statutory authority. The delay extending from 2018 until January 2020, particularly after the Applicant's request of July 2018 and the Respondent's rejection thereof in October 2018, has not been satisfactorily justified. In view of Article 14 and the principles laid down by the Hon'ble Supreme Court in *Arebee Star*, the financial consequences

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of such delay cannot be wholly transferred to the Applicant.

54. In view of the above, all the impugned demand notices issued to the Applicant by the Respondent based on the 2012 Circular, are set aside. The Respondent, however, is at liberty to issue fresh demand notices based on 2017/ 2018 Circulars as applicable, keeping in view the other observations made regarding demurrages etc., in this Order. The matter is disposed of accordingly. The parties to bear their own costs.

Sd/-

(**Justice A.J. Desai**)
Presiding Officer.

Place : Mumbai.
Date : 09/10/2026

Sd/-

(**C. Viswanath**)
Member.

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Sd/-

(**Dr. Sanjeev Ranjan**)
Member.